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EXAMINER

YEUNG, JAMES C

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 05/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/874,669</b>	Applicant(s) <b>Elliott III</b>
Examiner <b>James C. Yeung</b>	Art Unit <b>3743</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Mar 21, 2002

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-22, 24-46, and 48-55 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-22, 24-46, and 48-55 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15)  Notice of References Cited (PTO-892)      18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 and 6      20)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claims 20-21, and 44-45 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Claim Rejections - 35 USC § 112***

2. Claim 55 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

- The examiner can find no basis in the specification as filed to support the subject matter in lines 1-2 of claim 55 requiring that the second candle base material is **not** the same as the candle base material of the first portion. A traversal of this rejection must specifically point out what portions of the original filed disclosure upon which applicants rely on to support the claim.

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***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

use or (b) the invention was patented or described in a printed publication in this or a foreign country or in public on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 10, 13-14, 22, 24-27, 46, and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Brooman (U.K. Pat. 291, newly cited). The structure as claimed is fully anticipated by Brooman. In particular, Brooman shows in figs. 1-3, a candle **consisting essentially of**:

a first portion (a) formed of a candle base material;

a second portion (b) in contact with the first portion (a), the second portion (b) including at least one flame retardant (page 4, line 18) and being substantially resistant to burning ; and

a wick (c, fig. 1) inside the candle.

5. Claims 1-4, 10, 13-14, 22, 24-28, 46, and 49-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Thorne (U.K. Pat. 190257, newly cited). The structure as claimed is fully anticipated by Thorne. In particular, Thorne shows in fig. 1 a candle **consisting essentially of**:

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a first portion (a) formed of a candle base material;  
a second portion (b) in contact with the first portion (a), the second portion (b) including at least one flame retardant (page 1, line 68 thru page 2, line 4) and being substantially resistant to burning ; and  
a wick (c, fig. 1) inside the candle.

In regard to claims 52-53, Thorne further shows in fig. 1 that the candle comprises a third portion formed of a second candle base material in contact with the second portion, wherein the wick is further in the third portion.

6. Claims 25-28, and 33-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Linton (prior art of record). The method as claimed is fully anticipated by Linton. In particular, Linton shows in fig. 2, a method of making a self-extinguishing candle **comprising**:  
forming a candle body (note element 11) from a candle base material;  
forming a flame-resistant block (note element 12 and/or col. 2, lines ) from at least one flame retardant; and  
joining the flame-resistant block (12) to the candle body (11).

7. Claims 25-27, and 34, 37, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Brooman (U.K. Pat. 291, newly cited). The method as claimed is fully

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anticipated by Brooman. In particular, Brooman shows in figs. 1-3, a method of making a self-extinguishing candle **comprising**:

forming a candle body (note element a) from a candle base material;  
forming a flame-resistant block (note element b, fig. 2) from at least one flame retardant (page 4, line 18); and  
joining the flame-resistant block (b) to the candle body (a).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-8 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooman (U.K. Pat. 291, newly cited).

Brooman discloses the invention substantially as claimed. However, Brooman does not disclose the particular flame retardant as claimed in claims 4-8 and 29-32.

However, it is noted that the particular flame retardant as claimed is well known in the prior art as evidenced by applicants' own admission on pages 7-8 of the instant specification.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the flame retardant of Brooman from any one of the conventional flame retardants which are admitted by applicants to be well known on pages 7-8 of the instant specification. Because these flame retardant materials are well known, it would have been obvious to have use these materials given their proven ability to retard flame propagation. In this regard, the Examiner notes that many of these materials are well known as evidenced by the prior art U.S. Patents cited by applicants in IDS, Paper No(s). 5 and 6.

10. Claims 9, and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooman (U.K. Pat. 291, newly cited).

Brooman discloses the invention substantially as claimed. However, Brooman does not disclose a transparent candle.

However, it is noted that the particular transparent candle material as claimed is well known in the art as evidenced by applicants' own admission on page 6, line 20 thru page 7, line 13 of the instant specification.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the candle body of Brooman from any one of the conventional transparent wax materials which are admitted by applicants to be well known on page 6, line 20 thru page 7, line 13 of the instant specification. Because these transparent wax materials are well known, it would have been obvious to have use these materials given their proven

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ability to form transparent candles. In this regard, the Examiner notes that many of these materials are well known as evidenced by the prior art U.S. Patents cited by applicants in IDS, Paper No(s). 5 and 6.

11. Claims 15-16, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooman (U.K. Pat. 291, newly cited).

Brooman discloses the invention substantially as claimed. However, Brooman does not disclose a gelling agent.

However, it is noted that it is common knowledge in the prior art to include a gelling agent in the candle base materiel as evidenced by applicants' own admission on page 6, lines 6-19, and page 9, line 19 thru page 10, line 12 of the instant specification.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the candle body of Brooman from any one of the conventional gelling agents which are admitted by applicants to be well known on page 6, lines 6-19, and page 9, lines 19 thru page 10, line 12 of the instant specification. Because these gelling agent materials are well known, it would have been obvious to have use these materials given their proven ability to form candle base materials. In this regard, the Examiner notes that many of these materials are well known as evidenced by the prior art U.S. Patents cited by applicants in IDS, Paper No(s). 5 and 6.

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12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brooman (U.K. Pat. 291).

Brooman discloses the invention substantially as claimed. However, Brooman does not disclose a hydrocarbon oil in the candle base material.

However, it is noted that it is well known in the prior art to include a hydrocarbon oil in the candle base material as evidenced by applicants' own admission on page 6, lines 13-14 of the instant specification.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the candle body of Brooman from any one of the conventional hydrocarbon oils which are admitted by applicants to be well known on pages 7-8 of the instant specification. Because the claimed hydrocarbon oil materials are well known, it would have been obvious to have used these materials given their proven ability to form candle base materials. In this regard, the Examiner notes that many of these materials are well known as evidenced by the prior art U.S. Patents cited by applicants in IDS, Paper No(s). 5 and 6.

13. Claim 18-19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brooman (U.K. Pat. 291, newly cited).

Brooman discloses the invention substantially as claimed. However, Brooman does not disclose an additive.

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However, it is noted that it is common knowledge in the prior art to add an additive to a candle as evidenced by applicants' own admission on page 16, lines 18-24 of the instant specification.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the candle body of Brooman with any one of the conventional additives which are admitted by applicants to be well known on page 16, lines 18-24 of the instant specification. Because these additive materials are well known, it would have been obvious to have use these materials given their proven ability to repel insects. In this regard, the Examiner notes that many of these additives are well known as evidenced by the prior art U.S. Patents cited by applicants in IDS, Paper No(s) 5 and 6.

14. Claims 20-21, and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooman (U.K. Pat. 291, newly cited) in view Fawcett (newly cited).

Fawcett teaches the use of an object (note element 22, fig.2) for the purpose of forming a decorative candle body.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the candle body of Brooman with an object in order to form a decorative candle body in view of the teaching of Fawcett.

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15. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brooman (U.K. Pat. 291, newly cited) in view Tellier (newly cited).

Tellier teaches the use of a candle having a first portion formed of a candle base material, and a second portion formed of a candle base material. Tellier further shows in fig. 7 that the second candle base material is not the same as the candle base material of the first portion. This particular arrangement shown by Tellier is used for the purpose of providing particular lighting effects.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to from the candle body of Brooman in the manner as taught by Tellier in order to provide particular lighting effects.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Calderwood (U.K. Pat. 22640) is cited to show a wax candle having an incombustible base (e, fig. 3).

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Yeung whose telephone number is (703) 308-1047. The facsimile phone number for this Art Unit is (703) 308-7764.

JY  
May 9, 2002

  
James C. Yeung  
Primary Examiner